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Attention: Examiner Leslie A. Wong
Group Art Unit: 1761

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Diane Schwaiger
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Date: October 9, 2003

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Inventor: Robert L. Bradley

Art Unit: 1761

Serial No. 10/074,870

Examiner: Leslie A. Wong

Filed: February 13, 2002

Confirmation No.: 6804

For: *Method for Making Cheese Having Reintroduced Fine Particles of Cheese*

Attorney Docket: 282.016

Customer No.: 23598

RESPONSE TO RESTRICTION REQUIREMENT

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

In the Restriction Requirement mailed September 11, 2003, the Examiner required restriction between claims 1-28, which are drawn to a method of making cheese, (Group I), claims 29-35, which are drawn to a cheese, (Group II), claim 36, which is drawn to a method of making a dressing, (Group III), and claim 37, which is drawn to a dressing, (Group IV).

I. Election with Traverse

Applicant provisionally elects claims 1-28 of Group I for prosecution in the above-captioned patent application. This election is *with* traverse for multiple reasons.

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A. Groups I and II Are Not Materially Different

First, the restriction separating claims 1-28 and 29-35 into separate groups, namely Groups I and II, is improper because the two groups can be searched together without undue burden as the method and product claims are related and not materially different. Group I includes claims 1-28, which are directed toward a method of making cheese. Group II includes claims 29-35, which are directed toward a cheese. The Examiner contends that the product as claimed can be made by another and materially different process. This is incorrect. The claimed cheese cannot be made by another and materially different process. The claimed cheese can only be made by the steps of claim 1, claim 28, or other methods that are *not* materially different.

Independent claim 29 recites a cheese. Claim 29 requires that the cheese include "fine particles of cheese curd from a previous lot of milk." Claim 29 additionally requires that the cheese include "cheese curd that is processed from a subsequent lot of milk, wherein the fine particles of cheese curd from the previous lot of milk are incorporated into the matrix of the cheese curd of the subsequent lot of milk."

To make the claimed cheese, fine particles of cheese curd must be obtained from a previous lot of milk. This step is included in independent method claims 1 and 28 (steps a, b, and c). Making the claimed cheese further requires processing a subsequent lot of milk to yield cheese curd and that the fine particles of cheese curd from the previous lot of milk be incorporated into the matrix of the cheese curd of the subsequent lot of milk. These steps are steps of independent method claims 1 and 28 (steps d and e). If another process that was materially different were used, the claimed cheese would not result. Therefore, this restriction is not proper.

The methods recited in claims 1 and 28 are not materially different processes. Both share steps (a) through (c). Only step (f) of each claim differs. Step (f) of claim 1 requires "pasteurizing the subsequent lot of milk." Step (f) of claim 28 requires "washing

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the curds with a wash water, wherein the wash water contains fine particles of cheese curd; and collecting the fine particles of cheese curd from the wash water." Step (f) of each claim is not materially different. For example, a washing step can be performed along with the steps of claim 1, as claim 14 shows. In addition, the pasteurizing step of claim 1 can be added to the method of claim 28. The claimed cheese results from both the method of claims 1 and 28. Hence, this restriction should be withdrawn.

B. Groups III and IV Are not Materially Different

Second, the Examiner incorrectly restricts Groups III and IV. Group III includes claim 36, which is directed toward a method of making a dressing. Group IV includes claim 37, which are directed toward a dressing. The Examiner contends that the dressing can be made by another and materially different process. This is also incorrect.

The claimed dressing cannot be made by another and materially different process. It can only be made by following the steps of the method of claim 36 or another method that is not materially different therefrom. The claimed dressing requires "(a) fine particles of cheese curd isolated from a lot of milk; (b) salt; (c) cultured flavor; (d) cream; (e) milk; and (f) a stabilizer." Steps (a)-(d) of method claim 37 produces the required fine particles of cheese curd. Step (c) requires "adding the fine particles of cheese curd from the previous lot of milk to a mixture including salt, cultured flavor, milk, cream, and a stabilizer." Step (f) requires "mixing the fine particles of cheese curd with the mixture to form the dressing." If another method that was materially different from the method of claim 37 were used, the claimed dressing would not result. Therefore, the Examiner is incorrect in stating that the claimed dressing could be made by another method that is materially different. Thus, this restriction should be withdrawn.

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C. Groups I and III-IV and Groups II and III-IV Are Directed to Related Inventions

The Examiner contends that (1) Groups I and III-IV and (2) Groups II and III-IV are both unrelated. It should be noted that the Examiner's Notes in MPEP §808.01, which the Examiner cites and which discusses independent inventions, states that the form paragraph regarding independent inventions (which the Examiner used on page 3 of the restriction requirement) "is to be used only when claims are present to unrelated inventions, e.g., a necktie and a locomotive bearing." Clearly, this is not the case. The method claims share many of the same steps. Further, both products include fine particles of cheese. Therefore, this restriction should be withdrawn.

D. Searching All of the Claims Can Be Made Without Serious Burden

Finally, the PTO requires the examiner to examine an entire application on the merits, even if it includes claims to independent or distinct inventions, if a search and examination of the entire application can be made without serious burden. (MPEP §803). In the present case, the Examiner admits that Groups I and II are classified in the same class and subclass of the PTO's classification system and that Groups III and IV are classified in the same class and subclass of the PTO's classification system. Furthermore, all Groups are classified in the same class. Applicant fails to recognize how searching the same class and subclass for an invention that is clearly closely related to the elected invention can place *any* significant additional burden on the examiner. Hence, at a minimum, the claims of Group I should be considered with the claims of Group II.

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II. Conclusion

In light of the forgoing, applicant requests that the restriction requirement be withdrawn in its entirety and that all claims be considered. At a minimum, at least the claims of Group II should be considered along with the claims of the elected Group I.

Applicant reserves the right to file a divisional application for the subject matter of the non-elected claims at a later date should the restriction requirement be made final and affirmed on petition.

No fee is believed to be payable with this response. Nevertheless, should the Examiner consider any additional fees to be payable in conjunction with this or any future communication, authorization is given to direct payment of such fees, or credit any overpayment to Deposit Account No. 50-1170.

The Examiner is invited to contact the undersigned by telephone if it would help expedite matters.

Respectfully submitted,

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